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Freedom of the Press

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ABSTRACT

Personal liberty is a multidimensional spectacle that evades precise meaning. Broadly speaking, it stands for freedom and exemption from superfluous control. It indicates the power of the will, and one's ability to follow one's unrestricted choice. Personal liberty does not stand for merely the right to be free from physical restraint, but also to be free to enjoy one's own facilities in the way that they please. It is under this that all freedoms exist, the freedom of speech and expression being the foremost among them, second only to the freedom of life. In our country, liberty of thought, expression, belief, faith, and worship is promised. This philosophy is given in the Preamble of the Indian Constitution itself. The freedom of the press is an extension of the freedom of speech and expression, and the validity of this freedom in today's India is what has been explored in this article. Firstly, this article tries to appreciate this concept from the times of the British up to now - the role of the press in shaping the thoughts and mindsets of the people and its past and present liberties and confines, then secondly, this article tries to elucidate the practicality of the existence of such a freedom in these modern times including the present unprecedented times of the Coronavirus pandemic, and finally, it tries to grasp the role of the present government concerning the freedom of the press.

Keywords: *Personal liberty, Press Freedom, Right to speech and expression.*

I. INTRODUCTION

It is essential that people should have the freedom to express their feelings and make their views known.² This freedom is known as the freedom of speech and expression. All citizens of the Republic of India have the right to speech and expression, as given in article 19(1)(a) of the Constitution of India. The exercise of this right is, however, subject to certain reasonable restrictions, which are also stated in the Constitution under Article 19(2).

What is the freedom of the press?

The freedom of the press is the freedom of communication and expression through vehicles³

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² N Pradhan, Constitution of India - Freedom of Speech and Expression, Legal Service India E-journal

³ Mayukh Gupta, Freedom of Press in India, Legal Service India ONLINE

that involve passing on of the information to many people at large through various published materials and electronic media at large. The freedom of the press includes the freedom of publication, freedom of circulation, and freedom of pre-censorship.⁴ Unlike the U.S. Constitution, the freedom of the press is not explicitly mentioned in the Constitution. However, as was stated by Dr. B. R. Ambedkar, it's unnecessary to make a special mention of the press under the Freedom of Speech and Expression because as far as the Constitution is concerned, the individual citizen and the press were one and the same thing. Denial of the freedom of the press to citizens would counter democracy and undermine the power to influence public opinion.⁵ The liberty of the press is the amalgamation of all civil, political, and religious rights. In a democratic set up the press can act as a bridge between the government and its people. This right is important at the stage of the formation of the government. Democracy cannot survive without this right. The role of media is important as a feedback, exposure, and conduit mechanism in all countries.⁶

II. FREEDOM OF THE PRESS IN INDIA

(A) Background of the Freedom of Press

The press has always played an important role in India, starting from the time of the British rule. The press was the way for the national leaders to communicate with the general public and inspire and influence them with poems, stories, and songs to take part in the various movements that ultimately resulted in the freedom of India from the British rule.

In order to curtail the growing influence of the press, the British had enacted a number of laws and legislations to control the writings in the press.⁷ To retain their supremacy over the country, the British even declared the publication of any news pertaining to the Indian National Congress to be illegal. During the Second World War (1939-45), extensive powers under the Defence of India Act were utilised that enforced complete suppression of the press.

When India achieved Independence in 1947 and the Constitution started getting made, these were the incidents in the minds of the constitution-makers when they decided that the press would be considered to be on the same level as that of the individual citizen, because of which it doesn't need a specific mention in the Constitution, and it would be given full reign to influence the minds of its readers, as far as it doesn't disrupt the atmosphere of peace.

⁴ N Pradhan, Constitution of India - Freedom of Speech and Expression, Legal Service India E-journal

⁵ Manmeet Singh, Freedom of Press, Legal Service India ONLINE

⁶ Rahul Deo, *Freedom of Press: Fourth Pillar of Democracy*, Lawctopus ONLINE (Dec. 19, 2014)

⁷ Indian Press Act 1910, Indian Press Emergency Act 1931-32

During the era when the press council in India felt anxiety, the birth of the Media Law was witnessed and was followed by the Press Regulations that significantly had an impact on the publishing industry. Next was the introduction of the compulsory licensing for owning and running the printing presses which is typically empowered by the government. This action simply meant to prohibit the publication or circulation of any newspaper, book, or other printed material. The banning of the publication or dissemination created a commotion against the government that effectively weakened the power of authority.

(B) Limitations on the Freedom of the Press

“The role of journalism should be service. The press is a great power, but an uncontrolled pen serves to destroy.”

-Mahatma Gandhi

The freedom of the press is an extension under the right to free speech, and as stated under Article 19(2) of the Indian Constitution, the right to free speech and expression is subject to certain reasonable restrictions. Thus, the freedom of the press stemming from the right to free speech is not absolute. These restrictions are imposed in the following situations:

- *When the security of the state is jeopardised* - Reasonable restrictions can be imposed in the interest of the security of the state. Security of State refers to serious and aggravated forms of public disorder like rebellion, or war against the entire State or part of the State, etc.⁸ Anything that could further endanger the State when the State is already in a condition of war, must be prevented. Laws such as the **Official Secrets Act** and the **Prevention of Terrorist Activities Act (POTA)** have been used to limit press freedom.⁹

This also involves those times when the sovereignty and integrity of India is threatened - This was added in the Constitution (Sixteenth Amendment) Act 1963. At such times, it would be mindless of us to not follow restrictions, because these restrictions are being imposed for our safety.

- *When friendly relations with foreign States are endangered* - This was added in the Constitution (First Amendment) Act 1951.¹⁰ Reasonable restrictions can be imposed

⁸ N Pradhan, *Constitution of India - Freedom of Speech and Expression*, Legal Service India E-journal

⁹ Rahul Deo, *Freedom of Press: Fourth Pillar of Democracy*, Lawctopus ONLINE (Dec. 19, 2014)

¹⁰ N Pradhan, *Constitution of India - Freedom of Speech and Expression*, Legal Service India E-journal

when relations with other States are threatened, which could lead to jeopardy in the security and sovereignty of the State.

- *When basic decency or morality is compromised* - It refers to the publication of any material that could be counted as vulgar, invasive, or offensive in any way.

This includes Defamation - publication of any data about the other person or institution that is offensive to them and brings them down on any public platform.

This constitutional right does not allow a person to publish any material that is specifically slanderous towards the courts.

It is important to note, however, that defamation of any kind does not involve the expression of one's opinion or criticism on a public platform.

- *When public order could be disrupted* - This was also added in the Constitution (First Amendment) Act 1951 in order to meet the situation arising from the Supreme Court's judgement in the *Romesh Thapar v. State of Madras*¹¹. It refers to situations that cause the disruption of public order, but it does not involve circumstances involving mere criticism of government laws and policies.

III. THE RESPONSIBILITY OF THE PRESS IN INDIA AND ITS RELATION TO ITS FREEDOM FROM SUPPRESSION

Since we received independence from the British Rule in 1947, the nation has relied on newspapers to get their daily dose of information. This trust is in part because of the media's significant influence on India's freedom movement and its role as a gatekeeper of the public interest and protector of democracy. The responsibility of the press is to provide the people with accurate information on electronic as well as publishing platforms, after an appropriate and thorough investigation and create emphasis and propaganda around the right topics, thus allowing the people to create their own lucid opinions, which is an absolute necessity in a democracy, as India is.

More often than not, however, the media behaves immaturely. *The aim of the press nowadays is to create a sensation, rather than provide the people with real information.*¹² Sensational stories receive lots of news coverage simply because they are thrilling, not because they are important. *Due to this reason, non-important issues are portrayed as genuine issues, just in order to create a buzz. The real issues that affect everyone's lives are mostly overlooked and*

¹¹ AIR 1950 SC 124

¹² Markandey Katju, *Media and Issues of Responsibility*, Article, The Hindu (Oct. 21, 2011)

ignored. At a Lakme India Fashion Week event, there were 512 accredited journalists covering the event in which models were displaying cotton garments, while the men and women who grew that cotton were dying by suicide.¹³ Facts are also often twisted, and words said are taken out of context, in order to keep the hubbub alive. Sometimes the media does mention farmers' suicides, the rise in the price of essential commodities, and so on, but such substance coverage is very less as compared to the total amount of matter broadcasted. The bulk of the coverage goes in showing the life of film stars and other celebrities, fashion parades, cricket, and astrology.¹⁴ For this reason, the media is often paid to show certain circumstances in specific ways, in order to keep a variety of topics pertinent. There is also the tendency to create specific impressions on certain subjects. The words 'heroes' and 'heroines' in our country today are synonymous with film stars, due to the depiction of them in that way by the media. If in certain cases the media does actually report real news, then, the media persons are even threatened and stopped from doing so in order to hold the country's sympathy on that issue, by the people who have ascendancy.

The press is doing their job of creating impressions and influencing minds. But it is doing so for the wrong themes, for the issues that make no difference. People assume that the media is more neutral and freer from the elements of power. The media is not only considered as a source of news, but it is also considered as the voice of the people carrier and fittings.¹⁵ The media and press of today is being used by the people who come with money to keep themselves relevant in modern times, thus causing those who follow it to get misled by it. The freedom given to the press is for reasons that no one remembers anymore. Today, the press is being used to express opinions on important topics, if they're at all mentioned, and not allow the people to form their own views, thus successfully going against the main objectives of the press itself. The targets of the press involve only 'what people want to hear.' In my opinion, this is a waste of the freedom given to the press. Although the freedom of the press is a necessary element in a democratic country like ours, if the real issues are not mentioned, and whatever is mentioned depends on the amount of money paid to them and what the people would be interested in knowing, then it makes no difference whether the press is given any freedom or not. If this continues, then the press has no freedom anyway, as it is being controlled and swayed by those in various fields of power.

"Today's media, under either threat, luring or manipulations, is not only crawling but is

¹³ Markandey Katju, *Media and Issues of Responsibility*, Article, The Hindu (Oct. 21, 2011)

¹⁴ Markandey Katju, *Media and Issues of Responsibility*, Article, The Hindu (Oct. 21, 2011)

¹⁵ Rahul Deo, *Freedom of Press: Fourth Pillar of Democracy*, Lawctopus ONLINE (Dec. 19, 2014)

happily licking the 'boots' of the present regime and wagging their tails to appease their 'masters' by overzealous publicizing government's narratives."

- Apurva Trivedi (Journalist for over 19 years)

(A) The Status of the Freedom of Press in Today's India

The press has received a lot of success in obtaining justice in the recent past¹⁶, as can be understood from Jessica Lal's murder case and Priyadarshini Mattoo's rape and murder case among various others. Its exposure of the misdeeds of the government has led to it having to face difficulties.

As understood from the case of the *Indian Express v. Union of India*¹⁷, it was held that the press plays a significant role in the democratic machinery, and courts have a duty to uphold its freedom and invalidate all laws and administrative actions that try to curtail on that freedom. However, in recent times, people in the country are forgetting the real job of the press: reporting the truth. After years of being the voice that brought social change, the media is now being controlled and manipulated by authorities who have attempted to kill stories that hurt their reputation. Although no democracy has absolute freedom of speech, unless citizens have the right to express themselves in the political process, no government can be made accountable for its actions.

The current media situation seems to harken back to how it was at the time of the 1975 to 1977 internal disturbance, when the exercises of the press were controlled. Back then, strict orders were imposed on the media houses, resulting in the abandonment of press freedom. Last year, Foreign Policy reported that New Delhi cut off state advertising for at least three publishers of prominent English newspapers and the senior heads of those groups and opposition leaders contended that the advertisement freeze was counter for news reports criticizing the law making body. The officials aren't even trying to hide the fact that they're manipulating the fourth pillar of democracy - freedom of the press.¹⁸ In the years under Honourable Prime Minister Narendra Modi's BJP administration, India's place in the *Reporters Without Borders' Press Freedom Index* has dropped from 136th in 2015 to 142nd in 2020. The ruling party has even beaten, arrested, and forced to resign those journalists who tried to report news about the government or other contentious issues or for disregarding the Hindu patriot government's principles.¹⁹

¹⁶ *Mayukh Gupta*, Freedom of Press in India, Legal Service India ONLINE

¹⁷ (1985) 1 SCC 641

¹⁸ Peony Hirwani, *India's media is Losing its Freedom, and the Crackdown of the Press could get even Worse*, Business Insider ONLINE WEBSITE (Oct. 21, 2020)

¹⁹ Peony Hirwani, *India's media is Losing its Freedom, and the Crackdown of the Press could get even Worse*,

(B) Freedom of the Press amid the Covid-19 Pandemic²⁰

Amid a nationwide lockdown since March 24 to curb the spread of coronavirus, journalists across India are being charged with sedition and summoned to police stations for reporting on the government's handling of the pandemic. For example, Dhaval Patel ²¹ was detained and booked with sedition for writing about the change in Gujarat's political leadership by the BJP after the state's rapid rise of coronavirus cases. Despite there being more than 150,000 cases of coronavirus, India has suspended daily press briefings on the pandemic since May 11, 2020, for unexplained reasons.

The BJP-led government has gone so far as to petition the Supreme Court to stop publication of any COVID-19 information that is not cleared by them. The court denied the petition but directed the media to 'refer to and publish the official version of the developments', thus successfully managing to curtail its freedom.

IV. CONCLUSION

Freedom of speech and expression is the blood of democracy, palpitation of democracy, control of the government and creates awareness among the people.²²

The freedom of press indicates freedom from any interference from authority which would have the effect of intrusion with the content & its circulation. To preserve the democratic way of life in India, it is necessary that the freedom of the press continue to exist. The press of India is that of the largest democracy in the world. It should understand its worth and the reasons for its existence and do justice to those ideas. The media is a crucial instrument of accountability, in addition to being an instrument of communication. A free press and free media rank along with an independent judiciary as one of the two institutions that can serve as powerful counter forces to corruption in public and private life.

As the fourth pillar of our Indian democracy after the Legislative, Executive, and the Judiciary, the press has played significant roles in the development of our country, in delivering justice, and in public welfare, but the press has also acted irresponsibly several times. If the media prove incorrigible after warnings, harsh measures may be required. But that should be done only as a last resort and only in extreme situations. First, we should try to resolve the issues

Business Insider ONLINE WEBSITE (Oct. 21, 2020)

²⁰ Bansari Kamdar, *Covid-19 and the shrinking Press Freedom in India*, The Diplomat ONLINE (May 29, 2020)

²¹ Editor of the Gujarati news portal *Face of Nation*

²² Rahul Deo, *Freedom of Press: Fourth Pillar of Democracy*, Lawctopus ONLINE (Dec. 19, 2014)

through dialogue, consultation, and self-supervision.²³

Each country places its own limitations on freedom of expression. What matters is that those limitations are not misused by political forces to limit public scrutiny of policies and actions that have an impact on the integrity of governance.²⁴

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